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U.S. Bank National Association as Trustee for JPMorgan

Chase Mortgage Acquisition Trust 2006-HE3 Asset

Backed Pass Through Certificates, Series 2006-HE3

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

FELY P. MABUTAS,

Plaintiff,

vs.

MORTGAGE ELECTRONIC

REGISTRATION SYSTEMS INC. COOPER

CASTLE LAW FIRM, LLP, U.S. BANK

NATIONAL ASSOCIATION AS TRUSTEE

FOR J.P. MORGAN MORTGAGE

ACQUISITION TRUST 2006-HE3, ASSET

BACKED PASS-THROUGH

CERTIFICATES, SERIES 2006-HE3, DOES I

through X and ROE CORPORATIONS I

through X;

Defendants.

Case No.: 2:11-cv-01771-JCM-PAL

(Eighth Judicial District Court
Case No.: A-11-650626-C)

ORDER

This matter came before the Court for hearing on Plaintiff Fely Mabutas' Application for Temporary Restraining Order and Motion for Preliminary Injunction at 10:00 a.m. on November 16, 2011. Counsel for both parties appeared and made argument, in addition to the briefs and evidence filed in this matter. Having considered the motion, opposition, reply, the exhibits thereto, argument of counsel, and the pleadings and files herein, the Court finds as follows:

1 1. Issuance of a Preliminary Injunction requires that the party seeking the relief
2 demonstrate that there is a likelihood of success on the merits of the underlying claim; that
3 without such relief that party will suffer irreparable harm; that the balance of hardships favors
4 that party; and that the public interest would be harmed by the failure to grant the relief.

5 2. The Plaintiff has not demonstrated that she is entitled to a Preliminary Injunction,
6 because Plaintiff has not demonstrated a likelihood of success on the merits, that she will suffer
7 irreparable harm, that the public interest would be served in any way, or that the balance of
8 hardships weighs in her favor.

9 3. The Court finds that the law in this District and the Ninth Circuit allows
10 Defendant Mortgage Electronic Registration Services to act as the Lender's nominee in the Deed
11 of Trust and allows MERS to take the actions necessary to secure the Lender's interests. Thus,
12 the arguments related to the involvement of MERS in the Deed of Trust fail.

13 4. The Court further finds that Plaintiff mistakenly relied on the version of NRS
14 107.080 *et seq.* that did not yet exist at the time the Trustee issued the Notice of Breach and
15 Default and Election to Cause Sale of Real Property Under Deed of Trust ("Notice of Default"),
16 and that because the statute does not apply retroactively, Defendants were not required to
17 comply with NRS 107.080 as it was amended in 2009 after the Notice of Default issued.

18 5. Plaintiff admits that she has defaulted on her payment obligations under the
19 Promissory Note.
20

21 6. The law in Nevada does not require a Lender to provide the Borrower with the
22 original Note prior to initiating non-judicial foreclosure proceedings.

23 7. Plaintiff has presented no evidence that the Lender is not entitled to foreclose
24 under the Note and Deed of Trust.
25

8. Plaintiff has an adequate remedy at law in the event that there is a problem with the trustee sale and, therefore, will not be irreparably harmed by denial of the preliminary injunction.

9. The public interest does not apply in this case.

10. The relative hardships do not favor Plaintiff.

THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Application for Temporary Restraining Order and Motion for Preliminary Injunction (Doc. No. 6) is DENIED.

Dated December 23, 2011.

James C. Mahan
The Honorable James C. Mahan
United States District Court Judge

Respectfully submitted by:

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Approved as to form and content:

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